In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 229

METROPOLITAN LIFE INSURANCE COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

Section 9(c)(5) of the National Labor Relations Act provides that, in determining whether a unit is appropriate for collective bargaining, "the extent to which the employees have organized shall not be controlling." The National Labor Relations Board found that a unit consisting of the Company's nine district offices in and around Cleveland, Ohio (six offices within the city limits and three in adjoining suburbs), to

be appropriate for collective bargaining. 138 NLRB 512. The question presented is whether the Board's selection of this unit, concededly proper on the basis of the reasons given by it, may be held to have been controlled by the extent to which the employees have organized, in violation of Section 9(c)(5), because the Board, in other cases involving employers in the insurance industry, consistently approved the unit sought by the union.

The court below answered this question in the negative. Its decision is in accord with decisions of the Third and Fourth Circuits in other cases involving the same legal issue. *Metropolitan Life Insurance Co.* v. *National Labor Relations Board*, 328 F. 2d 820 (C.A. 3), pending on petition for a writ of certiorari, No. 56, this Term; *National Labor Relations Board* v. *Western and Southern Life Insurance Co.*, 328 F. 2d 891 (C.A. 3), pending on petition for a writ of certiorari, No. 91, this Term; *National Labor Relations Board* v. *Quaker City Life Insurance Co.*, 319 F. 2d 690 (C.A. 4). However, the decision of the court below is in conflict with the decision of the First Circuit in *Metropolitan Life Insurance Co.* v. *National Labor Relations Board*, 327 F. 2d 906, pending on petition for a writ of certiorari, No. 98, this Term.

The government believes that this conflict warrants resolution by this Court, and accordingly has filed a petition for a writ of certiorari to review the First Circuit decision (No. 98, this Term). Moreover, Metropolitan has filed a petition for a writ of certiorari to review the decision of the Third Circuit (No. 56, this Term) and the government has stated

that it does not oppose the grant of that petition if the petition in No. 98 is also granted. The instant case presents the same issue as the First and Third Circuit cases in a substantially identical factual setting. In these circumstances, we suggest that, if the Court grants the petitions in Nos. 98 and 56, it should hold the present petition on the docket pending the decisions in those cases, and then dispose of it in accordance therewith.[1]

Respectfully submitted,

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JULY 1964.

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[1] The government has recommended that the same course be followed with respect to the petition filed in *Western and Southern Life Insurance Co., supra,* No. 91, this Term.

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